

GEORGE J. BURNETT

IBLA 80-538

Decided September 24, 1980

Appeal from decision of Idaho State Office, Bureau of Land Management, holding Skip No. 1 and 2, Sherry G No. 1, Randette No. 1, Troy No. 1 mining claims abandoned and void. IMC 48882.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

APPEARANCES: George J. Burnett, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

George J. Burnett appeals from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated November 15, 1979, declaring the Skip No. 1 and 2, Sherry G No. 1, Randette No. 1, and Troy No. 1 mining claims abandoned and void. BLM stated that their filings and service fees were returned because the mining claims filings for these claims were not received on or before October 22, 1979, the date for filing claims located before October 21, 1976, as required by the Federal Land Policy and Management Act of October 21, 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a). The

decision indicated that failure to file within the time limits shall be deemed conclusively to constitute an abandonment of the mining claims and they shall be void.

Appellant contends he has substantially performed the requirements of 43 CFR 3833 by having the required materials mailed and postmarked on October 21, 1979, though not received until October 25, 1979.

[1] Section 314(b), FLPMA, 43 U.S.C. § 1744(b), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(a), reads as follows:

[§] 3833.1-2 Manner of recordation--Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location [of the claim or site, a certificate of location 1/] containing the information in paragraph (c) of this section shall be filed.

The above-quoted regulation notes that "file" shall mean being received and date stamped by the proper BLM office. Therefore, the documents had to be received and date stamped by the Idaho State Office by October 22, 1979, in order to be filed timely. Norman E. Brooks, 48 IBLA 16 (1980); Ray F. Coffee, 45 IBLA 217 (1980); John Sloan, 47 IBLA 146 (1980); E. F. Linn, 45 IBLA 217 (1980). The documents were not date stamped by the State Office until October 25, 1979. Failure to comply must result in a conclusive finding that the claims have been abandoned and are void. 43 U.S.C. § 1744(c) and 43 CFR 3833.4. The fact that the documents had been deposited in the mail and postmarked by the postal authorities October 21, 1979, will not excuse the late filing.

1/ The bracketed language was inadvertently omitted from 43 CFR 3833.1-2(a) (1979) upon printing. The correctly promulgated regulation appeared at 44 FR 20430 (Apr. 5, 1979).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge

